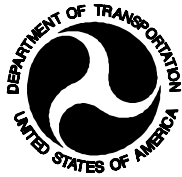


POSTED: December 11, 1996  
1 p.m.

Order 96-12-9



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 11th day of December 1996

SERVED: December 13,

1996

**1997 U.S.-BRAZIL COMBINATION SERVICE  
PROCEEDING**

**Docket OST-96-2016**

Application of

**AMERICAN AIRLINES, INC.**

**Docket OST-96-1883**

for allocation of seven weekly U.S.-Brazil  
combination  
frequencies (Miami-Manaus)

Applications of

**CONTINENTAL AIRLINES, INC.  
DELTA AIR LINES, INC.  
TOWER AIR, INC.**

**Docket OST-96-1964  
Docket OST-96-1963  
Docket OST-95-570  
(formerly Docket 48421)**

under 49 USC §§ 41102 for certificates of public  
convenience and necessity (US-Brazil) and U.S.-  
Brazil frequency allocations

Application of

**CONTINENTAL AIRLINES, INC.**

**Docket OST-96-1921**

for an exemption pursuant to 49 U.S.C. § 40109  
(Newark-Brazil) and U.S.-Brazil frequency allocation

## ORDER INSTITUTING PROCEEDING

### Summary

By this order we institute the **1997 U.S.-Brazil Combination Service Proceeding, Docket OST-96-2016**, to select two primary and two backup carriers to provide scheduled combination services between the United States and Brazil, and to allocate frequencies for such services among designated U.S. combination carriers. We consolidate the frequency application of American Airlines, Inc. and the certificate applications of Continental Airlines, Inc., Delta Air Lines, Inc., and Tower Air, Inc. into this proceeding.<sup>1</sup>

### Background

American, United, and Tower now provide direct scheduled combination services to Brazil. American and United hold certificate authority to serve specific cities in Brazil.<sup>2</sup> Tower does not now hold certificate authority to serve Brazil. Rather, it holds temporary exemption authority to serve between New York and Miami, on the one hand, and Sao Paulo and Rio de Janeiro, on the other hand. Tower's authority expires March 30, 1997. When we gave Tower authority to conduct U.S.-Brazil operations, we expressly characterized that authority as *pendente lite* in nature and said that we would address the long-term service needs in the U.S.-Brazil market in the context of a certificate proceeding. In addition to these three carriers that operate their own services to Brazil, Delta serves the U.S.-Brazil market through a code-share arrangement with Varig. S.A.<sup>3</sup>

Before we had conducted the certification proceeding contemplated in our award to Tower, representatives of the United States and Brazil signed a Memorandum of Consultations (MOC) agreeing to a revised schedule to the U.S.-Brazil Air Transport Agreement.<sup>4</sup> Under this MOC, effective April 1, 1997, the United States may designate a total of four U.S. carriers for scheduled combination services.<sup>5</sup> Also, effective April 1, 1997, the four

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<sup>1</sup> We will not consolidate Continental's exemption application in Docket OST-96-1921 into this proceeding. Continental's exemption application was filed the same day that our Notice soliciting certificate applications was posted, and Continental has subsequently filed a certificate application in response to that notice. In these circumstances, Continental's exemption application is moot, and we will dismiss it.

<sup>2</sup> American and United also hold broad exemption authority from any U.S. point to all Brazil and beyond points authorized in the bilateral agreement with Brazil.

<sup>3</sup> American has been allocated 49 frequencies; Tower, two frequencies; and United, 28 frequencies. Delta has not needed frequencies in order to hold out services under its code-share agreement with Varig since Varig is the operating carrier under the arrangement.

<sup>4</sup> U.S.-Brazil Memorandum of Consultations, dated October 24, 1996. The two delegations stated that they would recommend that their respective governments apply the terms of the revised schedules on the basis of comity and reciprocity pending conclusion of the agreement.

<sup>5</sup> Prior to the new MOC, the United States was limited to three designations for scheduled combination services. Under the amended route schedule, U.S. designated airlines may operate over the following routes: (1) from a point or points in the United States, via intermediate points, to Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador de Bahia, and beyond Brazil to Argentina, Uruguay, Paraguay and Chile and (2) from a point or points in the United States, via intermediate points, to ten

designated U.S. carriers collectively may operate a total of 98 weekly frequencies. By Notice served November 6, 1996, the Department solicited applications from carriers interested in using the fourth designation for combination service which becomes available April 1, 1997, and from new entrant as well as incumbent carriers for allocation of the frequencies available for U.S.-Brazil combination services. Applications were due November 18, 1996; answers, November 25, 1996; and replies, December 2, 1996.

## **Applications and Responsive Pleadings**

Three carriers--American, Continental and Delta--filed applications in response to our November 6 Notice. Continental and Delta filed applications for new certificate authority and for frequency allocations to support their proposed services. American had filed an application for a frequency allocation prior to our Notice, and supplemented that application in response to the information requested in the Notice. In addition, Tower has a pending certificate application for U.S.-Brazil services.<sup>6</sup>

Under their proposals, American would serve between Miami and Manaus; Continental between Newark and Sao Paulo/Rio de Janeiro; Delta between Atlanta and Sao Paulo/Rio de Janeiro and between New York and Rio de Janeiro; and Tower between New York/Miami and Sao Paulo/Rio de Janeiro. A summary of the carriers' applications and of the pleadings filed in response is attached in Appendix A.

## **Decision**

We have decided to institute the **1997 U.S.-Brazil Combination Service Proceeding** to certificate carriers for the third- and fourth- U.S.-carrier designations for U.S.-Brazil combination service. This proceeding will select two primary and two backup carriers for services between the United States and Brazil and will allocate 21 weekly frequencies among designated U.S. carriers.<sup>7</sup>

The principal purpose of this case is to examine the long-term air service needs of the U.S.-Brazil market and which U.S. airlines can best meet them. We said we would conduct that examination at the time that we granted Tower its temporary U.S.-Brazil authority. We have decided to do so now because Tower's temporary authority is about to expire and because we have recently negotiated a fourth designation that provides for additional U.S. carrier service in the market. We have also decided to consider both designations in the context of a single

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points in Brazil (in addition to those mentioned in (1) above) to be served on a code-share basis only, such points to be selected by the Government of the United States, with notification to the Government of Brazil (and may be changed as often as desired) upon 30 days' notification to the Government of Brazil.

<sup>6</sup> At one point, Tower was allocated a total of five weekly frequencies for its Brazil services; however, three of those frequencies expired October 17, 1996, and Tower did not file an application for renewal. By letter dated December 3, 1996, Tower seeks an emergency allocation of one additional weekly frequency so that it may operate three weekly flights between Miami and Sao Paulo beginning December 17, 1996. Tower seeks this authority through March 30, 1997, coextensive with duration of its existing underlying authority and frequency allocation. Tower's request for an additional allocation will be handled separately.

<sup>7</sup> There are 21 frequencies which will be at issue in this proceeding (5 unallocated from the last agreement; 14 from the new MOC; and 2 which have been allocated only on a temporary basis to Tower).

proceeding because this approach provides a fair, effective and efficient process for our review, and ultimately, for determining how we may derive the most significant public benefits from the authority available to U.S. airlines in the market. We intend to process this case on an expedited procedural schedule to facilitate a timely final decision in this case.<sup>8</sup>

Since we have determined to certificate carriers for both the third and fourth designations and since this decision was not specifically reflected in our November 6 Notice, we will afford U.S. carriers an additional opportunity to file applications for U.S.-Brazil combination authority. Given our desire to expedite a decision in this case, we will require that such applications be filed no later than December 20, 1996, and that they be filed directly into the proceeding docket we establish by this order for the **1997 U.S. -Brazil Combination Service Proceeding**. Furthermore, while we are prepared to provide a brief additional opportunity for U.S. carrier applications, we emphasize that all new applicants must be prepared to adhere to the procedural schedule established by this order and that all applicants must adhere to the procedural and evidentiary requirements.<sup>9</sup> We will consolidate into this proceeding all applications filed in response to our Notice as well as Tower's outstanding certificate application for U.S.-Brazil service. However, in this regard, we will require Tower to supplement its previously filed application no later than December 20, 1996, to include the information requested in our November 6 Notice with respect to its current service plans in the market including the markets it proposes to serve, the frequencies requested for such service, a full description of the services currently provided, and its proposed startup date.<sup>10</sup>

Whether certificating carriers for this service is consistent with the public convenience and necessity will not be at issue. The traffic rights involved constitute a valuable resource obtained in exchange for granting Brazil route opportunities for its airlines to serve the United States. The introduction of additional U.S. carrier service will provide new service options to travelers and shippers and will enhance competition in the U.S.-Brazil market. In these circumstances, we find that the public interest clearly calls for use of the rights.

In determining which carriers/gateways will be authorized, our principal objective will be to maximize the public benefits that will result from award of the authority in this case. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the traveling and shipping public. We will also consider the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S.-Brazil market, and any other market shown to be relevant, in order to promote an air

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<sup>8</sup> Continental has requested that we consider only the fourth designation at this time and hold a separate proceeding on the third designation later. We do not find that the public interest warrants the time and expense to the carriers and to the Department of conducting two consecutive proceedings to serve the U.S.-Brazil market. The U.S. Peru precedents cited by Continental are inapposite, given the different circumstances presented.

<sup>9</sup> See Orders 96-11-28, page 11; 96-6-53, pages 7-8; and 96-4-48, page 9.

<sup>10</sup> The full scope of Tower's proposal would not be expected until the Direct Exhibit stage of this proceeding; however, since Tower's original certificate application was filed in 1992, we believe that its service plans including the number of frequencies it seeks in this proceeding, should be updated and made available to the other applicants for the preparation of their exhibits, so that all applicants are on equal footing. We likewise expect any additional applicants that may file to provide the same information.

transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where they are relevant.

The U.S.-Brazil agreement provides for beyond services to Paraguay, Uruguay, and Chile. Currently, additional rights to serve Chile are not available. We are prepared to consider in this proceeding the award of beyond authority set forth in the agreement, provided that such proposals are consistent with, and may be implemented under, the relevant bilateral aviation agreements.

Concerning the issue of backup authority, it is possible that carriers in this case may propose service from different gateways. The considerations that lead to the selection of a carrier and gateway are entirely interrelated, and a gateway's selection for primary service by a particular carrier does not mean that a different carrier at the same city would necessarily represent the next-best alternative. Our primary focus in awarding backup authority is to maximize use of the available route rights in the event that the primary carrier does not institute service or discontinues service during its first year of operations, not to ensure continuation of service from a particular gateway.

We also will consider in this proceeding how frequencies should be allocated among the designated carriers and, as discussed below, we will subject the frequency allocations made in this proceeding to our standard 90-day dormancy provisions.

## **Procedures and Evidence**

In view of the imminent availability of the route rights, we will expedite the schedule for this proceeding to facilitate operations by the selected carriers as soon as possible. We believe that written, non-oral show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750) are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact that would warrant an oral evidentiary hearing in this case, and we note that no applicant requested oral, evidentiary procedures. We will not, however, move directly to a show-cause order or limit the record to the submission of only briefs and reply briefs as Continental suggests. While we are confident that the issues in this case can be adequately addressed on a written record, we are not prepared, in developing that record, to accord any of the applicants a lesser degree of procedural protection than that available under the show-cause procedures we routinely adopt in cases of this type. As noted above, however, we do intend to process this case on an expedited schedule to facilitate timely inauguration of service by the selected carriers. This case, which is subject to Rule 22a(d) of our procedural regulations [14 CFR 302.22a(d)], will be assigned to the Department's Senior Career Official, who will be the DOT decisionmaker in this proceeding.

We have appended to this order an evidence request for the benefit of the parties in this case. In addition to the material requested, applicants and any other parties may submit any additional information that they believe will be useful to us in reaching a decision.

We will also require American, Delta, Tower, and United, the U.S. carriers currently providing combination service in the U.S.-Brazil market, whether or not they participate in this proceeding, to file the service data set forth in the attached Appendix (Appendix B at 2, Section III A.2). We believe that such data are necessary for a complete record in this case, and therefore, we are exercising our power under 49 U.S.C. 41708 to require these carriers to file these data. Also in keeping with our goal of ensuring a complete record, we have specifically requested evidence that will enable us to weigh the merits of proposals from applicants that may be operating both on a direct service as well as a code-share basis.

Consistent with our policy with respect to limited entry route rights, we will award the U.S.-Brazil authority at issue in this proceeding in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102(c). The duration of authority will be five years for the primary carrier and one year for the backup carrier, unless the latter authority is activated during that time, in which case, it will continue in effect for five years.<sup>11</sup>

We will not, however, adopt the suggestion from Continental and Delta that we award certificates authorizing generalized U.S.-Brazil and beyond route authority broader than that specifically proposed to be served.<sup>12</sup> In a comparative selection proceeding carriers are selected based on their specific service proposals, and the experimental certificates awarded make clear that the award is intended to ensure that the carrier can be measured on the proposal for which it was selected.<sup>13</sup> Therefore, it has been our practice to issue the certificate authority for the markets the carriers actually have submitted a proposal to serve. Neither Delta nor Continental has presented any persuasive basis to deviate from that policy. We recognize that at the time carriers submitted their certificate applications, they may not have determined exactly which cities would be included in their proposals and that it was necessary for their certificate applications to be broad enough to afford them flexibility in refining their proposals before the direct exhibit date without the need to amend their certificate applications should their plans change. They should not, however, expect the final award in this case to grant them authority other than that which is included in the service proposals presented in this proceeding.<sup>14</sup>

Consistent with our standard practice, the frequencies allocated in this proceeding will be for one year's duration and will be subject to our standard 90-day dormancy condition, wherein frequencies will be deemed dormant if they are not operated for 90 days, except where service in the market is seasonal. In all such instances of seasonal service, however, a carrier must notify the Department that its operations are of a seasonal nature; otherwise, the dormancy condition will apply. Under the dormancy condition if flights allocated are not used for 90 days, the frequency allocations expire automatically, and the frequencies revert back to the

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<sup>11</sup> See Section 399.120 of our regulations.

<sup>12</sup> We regard this conclusion as effectively mooted the concern raised by United regarding the award of broad U.S.-Brazil certificate authority in this proceeding.

<sup>13</sup> See Order 95-10-24 at 10. (*U.S.-Peru Combination Service Proceeding, Docket OST-95-370*).

<sup>14</sup> Our past experience has been that once a certificated carrier's plans evolve such as to lead to a desire for modification of its authorized services, we have been able to address these carrier needs through our exemption powers. We know of no reason why this approach would not be available to the selected applicants here.

Department for reallocation so that they can be available for other carriers on an immediate basis should they seek to use them.

### **Procedural Timetable**

The MOC provides valuable new rights for U.S. carriers to serve Brazil effective April 1, 1997. We believe that it is in the public interest to select carriers on a timetable that will allow the selected carrier(s) to enjoy the maximum benefit of these rights as close to the availability date as possible. Therefore, we intend to proceed on an extremely expedited basis. To this end, we are establishing the following procedural schedule for submissions in this case:

DOT Information Responses:	December 13, 1996
Carrier Information Responses:	December 20, 1996
Petitions for reconsideration of instituting order, new applications, & supplemented applications:	December 20, 1996
Answers to petitions for reconsideration, applications, and supplemented applications:	December 24, 1996
Direct Exhibits:	January 6, 1997
Rebuttal Exhibits	January 17, 1997
Briefs	January 31, 1997

All dates are delivery dates. An original and four copies of all submissions are to be received by the Department of Transportation Dockets no later than the dates indicated.<sup>15</sup> Due to the expedited nature of this case, service by facsimile is authorized. Parties should include their fax numbers on their submissions and should indicate on their certificates of service the methods of service used.

### **ACCORDINGLY,**

1. We institute the **1997 U.S.-Brazil Combination Service Proceeding**, Docket **OST-96-2016** to be decided by non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750);

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<sup>15</sup> The original filing should be on 8"x 11" paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

2. The proceeding instituted in ordering paragraph one will consider the following issues:
  - a. Which primary and backup carrier(s)/gateways should be selected to provide service between a point in the United States and a point or points in Brazil, consistent with the provisions of the amended U.S.-Brazil agreement;
  - b. How should the available frequencies be allocated among the newly selected and/or incumbent carriers for a one-year period;
  - c. What other authorities, including route integration authority, should be granted in conjunction with the Brazil services authorized in this proceeding; and
  - d. What terms, conditions, and limitations should be imposed on any existing certificate authority, and any new certificate authority awarded in this proceeding;
3. We consolidate the applications of American Airlines, Inc., Docket OST-96-1883, Continental Airlines, Inc., Docket OST-96-1964, Delta Air Lines, Inc., Docket OST-96-1963, and Tower Air, Inc., Docket OST-95-570 into the **1997 U.S.-Brazil Combination Service Proceeding**, Docket OST-96-2016;
4. We require that petitions for reconsideration of this order be filed no later than December 20, 1996; answers to such petitions shall be due no later than December 24, 1996;
5. We dismiss, without prejudice, the exemption application of Continental Airlines, Inc. in Docket OST-96-1921;
6. We grant the Petition of Delta Air Lines, Inc., for institution of a carrier selection proceeding and its motion to consolidate the captioned certificate and frequency allocation applications into that proceeding;
7. We grant the motions of Delta Air Lines for leave to file otherwise unauthorized documents in the captioned dockets;
8. We require all incumbent carriers whether or not they seek new or additional authority in this proceeding to file the incumbent carrier data requested in section III.A.2 of the attached evidence request; and



9. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Tower Air, Inc.; United Air Lines, Inc.; all other U.S. certificated air carriers; the Cincinnati/Northern Kentucky Parties; the Georgia and Atlanta Parties; the Ambassador of Brazil in Washington, DC; and the U.S. Department of State (Office of Aviation Negotiations).

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

### **Summary of Applications**

American seeks seven weekly U.S.-Brazil combination frequencies to provide daily nonstop service between Miami and Manaus and proposes to begin such services on April 1, 1997. American states that it will use B757 aircraft and will serve the route on a year-round basis. American states that it currently serves Sao Paulo from Miami, New York and Dallas/Ft. Worth and Rio de Janeiro from Miami and New York with its existing frequency allocation, and that the additional seven frequencies will enable it to serve Manaus, which currently is not served by a U.S. carrier.

Continental seeks authority to provide scheduled combination service between the United States and Brazil and to combine this authority with its other exemption and certificate authority consistent with applicable international agreements. Given the authority, Continental plans to initiate service between Newark and Sao Paulo and Rio de Janeiro in May 1997, using DC-10 aircraft. Continental seeks 14 weekly frequencies to conduct its proposed services.

Delta seeks a new or amended certificate authority to provide scheduled combination service from a point or points in the United States to Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador de Bahia and beyond Brazil to Argentina, Uruguay, and Chile; and allocation of 14 weekly frequencies. Delta proposes to operate two daily nonstop flights, one over a Cincinnati-Atlanta-Sao Paulo-Rio de Janeiro routing and the other over a New York (JFK) and Sao Paulo routing. Delta proposes to use Boeing 767-300ER aircraft for these services and states it will start service to Brazil within 90 days of receipt of governmental authorization, or April 1, 1997, whichever is later.

Tower seeks a certificate of public convenience and necessity to operate between New York and Miami, on the one hand, and Sao Paulo and Rio de Janeiro on the other hand. Tower proposes to use the B747-100 or B747-200 aircraft for its services and states that more detail will be provided at a later date.

### **Responsive Pleadings**

American, Continental, Delta and United Air Lines, Inc. filed answers, and American, Continental and Delta filed replies to the applications. In addition, Delta submitted a petition for the institution of a carrier-selection proceeding and a motion to consolidate. Continental, the Cincinnati/Northern Kentucky Parties, the Georgia and Atlanta Parties and Tower filed

separate answers to Delta's petition.<sup>16</sup> Delta filed separate replies to the answers of Tower and Continental.<sup>17</sup>

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Each applicant carrier argues that its application is superior to that of the others and objects to any other carrier's application to the extent that it would preclude approval of its own application.

United takes no position on the merits of the applications filed by Delta and Continental. However, it does object to either of those carriers being awarded broad U.S.-Brazil authority in the form of a certificate of public convenience and necessity while United's comparable U.S.-Brazil authority remains in the form of a temporary exemption subject to renewals on one- or two-year cycles. United states that it has on file an application to expand its U.S.-Brazil certificate authority to include all operating rights available under the bilateral. It notes, however, that its application (Docket OST-95-495 formerly 48295) also seeks other route realignment requests and simplification of its U.S.-Latin America route authority on Route 632.

American and Delta agree with United concerning grant of broad certificate authority, and Delta urges that it be granted a certificate authorizing it to provide service fully consistent with the U.S.-flag route description contained in the U.S.-Brazil bilateral agreement.

In terms of procedures and scope of the selection proceeding instituted, the carriers have presented differing views and considerations.

Delta argues that the proceeding instituted by the Department should consider selection of carriers for both the third and the fourth designations and allocation of 21 weekly frequencies. In support of its position Delta argues that Tower, the carrier currently serving under the third designation, operates under a *pendente lite* exemption and that in granting that authority the Department made clear that the long-term needs of the market would be considered in a proceeding instituted at a later time. Delta further states that Tower's current *pendente lite* award expires March 30, 1997, and that Tower has not used the designation effectively having been allocated up to five weekly flights and currently operating only one weekly flight. Given these circumstances, Delta argues that any proceeding that the Department institutes should include long-term award of both designations and allocation of 21 weekly frequencies--the 14 available effective April 1, 1997; five currently unallocated frequencies, and two frequencies currently held by Tower.

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<sup>16</sup> The Cincinnati/Northern Kentucky Parties consist of the City of Cincinnati, the Greater Cincinnati Chamber of Commerce, the Cincinnati/Northern Kentucky International Airport, and the Northern Kentucky Chamber of Commerce. The Georgia and Atlanta Parties consist of the State of Georgia, the City of Atlanta, Hartsfield Atlanta International Airport, and the Metro Atlanta Chamber of Commerce.

<sup>17</sup> Delta's replies were accompanied by motions for leave to file. We will grant the motions.

Continental opposes Delta's petition for a broader proceeding arguing that expanding the case will unnecessarily delay the awards and preclude the fourth designated carrier from receiving authority in time to begin services when the rights become available in April 1997. Instead, Continental urges the Department to limit the scope of the proceeding to the fourth designation and allocation of the 14 weekly frequencies that become available on April 1, 1997, and that the Department streamline the procedures to require that applicants file only briefs and reply briefs facilitating a final Department decision by mid February. Alternatively, Continental suggests that the Department proceed directly to show-cause order selecting Continental for the fourth designation and allocating it 14 weekly frequencies for its services. It argues that American,

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Page 3

Delta, and Tower could compete for the third designation and available frequencies in a separate proceeding.

Tower also opposes Delta's request for a broader proceeding arguing that there is no public interest basis for granting Delta's request. Tower states that it serves Brazil part of the year on an expanded schedule and part of the year at a reduced frequency and notes that it will be increasing its frequencies during the peak season commencing December 17, 1996.<sup>18</sup> Tower maintains that it provides service to a different segment of the market than does Delta; that without Tower's presence in the market no carrier will offer low fares; and that it would be inequitable and contrary to the public interest to subject Tower's Brazil authority to a forfeiture procedure.

Delta disagrees with Continental's suggestions, stating that concurrent consideration of the awards will give the Department the greatest flexibility to maximize the public benefits and competition consistent with U.S. international aviation policy issues.

American filed no comments to Delta's request to consider both designations in one proceeding. However, it urges the Department to institute a proceeding promptly using nonoral, show-cause procedures.

American and Delta also oppose Continental's position that the Department should immediately issue a show cause order.

Finally, American and Continental state that any proceeding instituted by the Department should include examination of Delta's code-sharing arrangement with Varig including the filing of that agreement and the effect Delta's application here will have on its existing operations with Varig and the competitive structure of the market.

The Georgia and Atlanta Parties and the Cincinnati/Northern Kentucky Parties support Delta's application and its petition requesting the institution of a carrier selection proceeding. They maintain that a carrier selection proceeding is necessary to allocate the fourth U.S.-flag

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<sup>18</sup> See footnote 6 on page 3 of this order.

combination service to Brazil and that the third U.S.-flag opportunity is also ripe for consideration at this time, noting that Tower's use of the third designation is under a *pendente lite* exemption which was issued without prejudice to the long-term award of that opportunity to be decided in the context of a certificate proceeding. They state that they intend to support actively Delta's application in a carrier selection proceeding.

## **EVIDENCE REQUEST**

### **I. Public Disclosure of Data**

Pursuant to sections 241.19-6 and 399.100 of the Department's regulations, it is determined that the Department's T-100 data for the period January 1, 1993, through final Department decision in this proceeding, and the Origin & Destination Survey Data (Data Bank 2-A) for the period January 1, 1990, through final Department decision in this proceeding, for operations between the United States and Brazil, are material and relevant to a final determination of the issues in this case. Those data have been released to the U.S. carriers and U.S. non-airline civic and governmental parties to this proceeding, who will be free to use those data to the extent they deem necessary.

### **II. Procedures and Ground Rules**

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.

### **III. Request for Information and Evidence**

#### **A. Information Responses**

##### **1. DOT Data**

The Economic & Financial Analysis Division of the Office of Aviation Analysis will make available to the parties the following data in the form of information responses:<sup>1</sup>

- (a) T-100 nonstop segment data, by month, beginning January 1, 1993, through the latest available month, between the United States, on the one hand, and Brazil, on the other.
- (b) T-100 on-flight market data, by month, beginning January 1, 1993, through the latest available month, between the United States, on the one hand, and Brazil, on the other.

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<sup>1</sup> Due to the volume of this material, we will be unable to print and distribute copies to the parties. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, S.W., Washington, D.C. In addition, the Department will issue on request copies of the information requests on computer diskettes. Parties who wish to receive diskette versions of the information responses, should contact the Economic & Financial Analysis Division, at (202) 366-2352. The Department will make this material available no later than the date specified in the text of this order.

Use of the data contained in the Department's Information Responses (either from hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.*, those that have filed applications or comments) in this proceeding.

(c) For the Calendar Years 1990 through March 31, 1996, O&D traffic from Table 15 of the Department's O&D Survey between all U.S. points, on the one hand, and Rio de Janeiro, Sao Paulo, and Manaus, Brazil.

(d) For the 12 months ended March 31, 1996, from the Department's O&D Survey between all U.S. points, on the one hand, and Rio de Janeiro, Sao Paulo, and Manaus, Brazil, on the other, that used the following gateways: Chicago, Los Angeles, Miami, New York, San Francisco, Washington, DC and "all others."

2. Incumbent Data (American, Delta, Tower, and United)

For each month for the twelve months' ended November 1996, provide the number of flights and complete flight itinerary for all flights operated in each city-pair market where service was provided in the U.S.-Brazil market, and the type aircraft used in providing those services. If service was seasonal, the markets and level of service should be clearly identified.

B. Direct Exhibits

The applicant carriers are directed to provide the sources, in exhibit form, for their traffic forecast. This information shall be set forth in such a manner that any other party could construct a traffic forecast from the exhibits without the necessity of having the actual source document at hand, particularly if the source is other than the Department's O&D Survey. Indicate growth rates, stimulation rates, and participation rates, as well as the bases for such rates.<sup>2</sup>

The source data for traffic forecasts made by any party shall be (1) the O&D Survey and/or (2) the U.S. International Air Travel Statistics (commonly referred to as INS Data), or (3) a combination of these data sources. Any party may provide a separate, additional forecast based on other source data if it wishes, but if so, that party should clearly explain the differences between its data source and the two specified above (*e.g.*, differences in collection methods, or adjustments made to raw data).

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<sup>2</sup> The base year for traffic forecasting purposes should be 12 months ended March 31, 1996, and the forecast year should be the 12 months ended March 31, 1998.

## 1. Applicant Carriers

Submit, at a minimum, the following:<sup>3</sup>

(a) Firm date for instituting service in the market, a breakdown for peak and off-peak seasons, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year (12 months ending March 31, 1998).

Schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

(b) Separate passenger traffic forecasts on an O&D market-by-market (city-pair) basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending March 31, 1998. The forecasts should be based upon the applicant's proposed schedules and should detail specifically the data sources of all traffic. Include any anticipated traffic changes in other markets on the applicant's existing system in which service will be altered as a result of the proposal in this case. The basis for any forecasting technique used should be clearly explained. Indicate any anticipated seasonal fluctuations;

(c) An indication whether or not the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and to the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be

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<sup>3</sup> The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Economic and Financial Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street SW, Washington, DC 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel® (version 5.x or earlier), Lotus 1-2-3® (version 3.x or earlier), Microsoft Word® (version 6.x or earlier), or WordPerfect® (version 5.2 or earlier) should be filed in their native formats. Parties may also file exhibits or briefs via e-mail to our Internet address: dot\_dockets@postmaster.dot.gov. Files sent via e-mail should be ASCII (text only) format. Parties using other software may either (1) file IR's, exhibits and briefs in the foregoing formats, or (2) contact Mr. Michael Lane at 202-366-2352 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.



financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance;

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(d) Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service;

(e) A description of any code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-Brazil service operated by a foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partner(s).<sup>4</sup> If in an existing code-share relationship with carriers involving the U.S.-Brazil market, provide in detail a description of whether proposed services in this proceeding will replace, supplement, or decrease operations with said code-share partners. Any carrier operating under a code-share agreement that has not filed that agreement with the Department, should provide a copy of that agreement in its direct exhibits. If both code-share and separate operations will be conducted, the applicant's exhibits should clearly reflect the full scope of the carrier's operations, including the levels of service under each operational arrangement, the cities to be served and traffic forecasts.

(f) Responses to the following interrogatories:<sup>5</sup>

(1) Will the carrier, if selected as backup, accept a condition in its certificate which (a) permits it to implement authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?

(2) Will the carrier selected for primary authority accept a condition in the certificate requiring institution of service by a date specified by the Department? What date should the Department specify?

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<sup>4</sup> Traffic forecasts under III.B.1(b), *supra*, should separately show connecting feed from the applicant's foreign-flag code-sharing partner(s).

<sup>5</sup> Any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate or frequency allocation issued will be for one year.